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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

ENATSKY, AARON L

ART UNIT PAPER NUMBER

3713

17

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/657,154

Applicant(s)

NAKAMURA ET AL.

Examiner

Aaron L Enatsky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,6-23,27-29,33,37-40,44-49 and 51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,6-23,27-29,33,37-40,44-49 and 51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Examiner acknowledges receipt of amendment on 08/20/03. Claims 1, 2, 6-23, 27-29, 33, 37-40, 44-49, and 51 remain pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 6-8, 10, 12, 14, 16, 20, 22-23, 27-29, 33, 40, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipps et al. '182 (Hereafter, Lipps) in view of Fenner et al. '501 (Hereafter, Fenner).

In re claims 1 and 51, Lipps teaches of a game apparatus with a light emitter operated by a player (2:54-55), a position detector detecting the light from the bat (1:45-47 and 2:56-58) at a plurality of positions (Fig. 2, ref 47), and a control unit controlling a game is that inherent through the game disclosure (3:5-13). Lipps does not however teach capturing successive spatial positions of an operation device to create a trace of the operation device movements. Fenner teaches a remotely controllable position indicator system that uses light emitters and detectors to determine movement and orientation of objects (Abstract). Fenner teaches the system as a remotely hand held implement (1:22-23) with transmitter and receiver pairs to form a number of planes used to determine 3-D spatial reference with respect to the hand held implements (1:59-67 and 2:37-48). Thus Fenner teaches that successive spatial positions are used to detect the

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movement of the operation device. Fenner envisions the system to be used for a plurality of applications such as detecting relative locations of players in a game and for interacting with images on a video screen (1:1-20). One would be motivated to use the 3-D spatial detection system taught by Fenner because such a system can increase the accuracy of the position detection system thus providing a player with better simulation and analysis of player performance (Lipps, 1:25-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lipps to use the 3-D spatial detection system taught by Fenner so that an increase in detection accuracy can provide better game simulation and analysis for a player.

In re claim 6, Lipps teaches that a direct cable connection can transmit to a game machine (2:51-52).

In re claim 7, Lipps teaches that a command display issues a prescribed operation to a game player and determines correctness of player device operation (3:5-12).

In re claims 22 and 27, Lipps teaches a light emitter operated by a player (2:54-55).

In re claims 28 and 33, Lipps has a game method to be executed on the game in the form of various sports training games (1:55-57).

In regard to claim 2, Lipps in view of Fenner teaches the claimed limitations as discussed above in addition to a light emitter disposed at a prescribed position (Lipps, Fig. 2) and a position detector detecting emitted light (Lipps, 5:22-55). Additionally, light detectors and emitters are functionally available for either the player or computer side without affecting device functionality (Fenner, 5:12-15).

In re claims 8, 16, and 40, Lipps teaches a command mark is blown out to a preset

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position through the teaching of a baseball pitch to the game player (3:5-22). A player can indicate the correct position by swinging a player operable device at the baseball where a control unit judges a correct indication through a hit. When at bat, a plurality of indicative positions is inherently provided as the swing zone of a player. While Lipps is lacking disclosure of displayed indicative positions, it would have been obvious to one of ordinary skill in the art at the time the invention was made to display the possible swing zones so a player can quickly learn the correct possible play positions.

In re claim 10, Lipps teaches that a player needs to be positioned at the relative center of the game device (Fig. 2).

In re claim 12, Lipps teaches that a light emitter is held in player's hand, which therefore is put on part of a player's body (Fig. 2).

In re claim 14, Lipps teaches that a vibration detection mechanism is included in a player operable device (2:40-42). Lipps in view Fenner does not teach the use of a percussion musical instrument body of the player operable device, however, lacking criticality to the claimed invention, the shape is considered a design choice and Lipps teaches that the invention can be used in a variety of activities (1:55-57). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a body shaped like a musical instrument for use in musical practice game.

In re claim 20, Lipps teaches the above mentioned claimed limitations, but does not teach holding a pose. However Lipps is directed to teaching a player to properly position himself for a variety of sports related games, sensing a plurality of proper elements crucial to correct game performance (1:45-55). As baseball, golf and other games rely on holding a position ready for a

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period of time to insure a correct movement, one would be motivated to assure correct player position over a period of time. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lipps to include a retained pose over time detector to insure a player is in a ready position to make a correct move in a game.

In re claim 23, Lipps teaches as above, that a light emitter can be located alternatively on a player operable device or opposite a player.

In re claim 29, Lipps has a game method to be executed on the game in the form of various sports training games (1:55-57).

Claims 9, 11, 13, 15, 18-19, 37-39, 44-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipps in view of Fenner as applied to claims 1-2, 6-8, 10, 12, 14, 16, 20, 22-23, 27-29, 33, 40, and 51 above, and further in view of Suzuki et al '968 (Hereafter Suzuki).

In re claim 9 and 44-49, Lipps in view of Fenner teaches the claimed limitations as discussed above, but does not teach a command mark with a command of a specific operation. Suzuki teaches a game machine providing a player with a plurality command marks blown out from a prescribe position, with each having different commands associated with each other (Fig. 1-9). Suzuki further teaches that musical rhythm is integrated with the game command marks, where the commands indicate a position a player needs to take (16:9-17:8). Lipps in view of Fenner and Suzuki are related as game machines capturing moves of a user, wherein a game computer judges move correctness. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lipps in view of Fenner and include a specific command operation with the command mark taught by Suzuki so that a player attempting to associate correct moves with specific pitches can be told what type of pitches were being

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displayed.

In re claim 11, Lipps teaches the limitations as discussed in claim 10.

In re claim 13, Lipps teaches the limitations as discussed in claim 12.

In re claim 15, Lipps in view of Fenner teaches the limitations as discussed in claim 14.

In re claim 18, Suzuki teaches providing sound corresponding to dance image data (9:56-57).

In re claim 19, Suzuki teaches operation prohibition through the disclosure that position indicators are provided for a player indicating allowed positional movements (Fig. 7) and also that correct moves are judged and scored (11:1-67). As Suzuki teaches displaying only allowed positions, which indicates to a player that other positional moves are prohibited.

In re claim 37, Lipps in view of Fenner teach the musical instrument shaped device as disclosed in claim 14, and Lipps additionally teaches a hit detector (2:35-45).

In re claims 38 and 39, Lipps in view of Fenner in view of Suzuki teach the claimed limitations as described in claim 9.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lipps in view of Fenner in view of Suzuki as applied to claim 1-2, 6-16, 18-20, 22-23, 27-29, 33, 37-39, 40, 44-49, 51 above, and further in view of Clear Vision Gaming (Hereafter, CVG). Lipps in view of Fenner in view of Suzuki teaches the claimed limitations as discussed above, but does not teach a plurality of game players operating a game that is controlled based on a level of agreement of the operation between the game players. CVG teaches a game using an alternative player operable unit that allows a plurality of players to participate in a variety of track and field events (Page 1). Through the track and field choices, CVG teaches that when a plurality of players compete, the

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players must agree on the operation/selection of a particular track and field event. Thus, CVG teaches a game is controlled based upon a level of agreement of a plurality of players for game operation. Lipps in view of Fenner in view of Suzuki and CVG are related in that both teach capturing moves of a user using alternative player operable devices and judging player move execution. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lipps in view of Fenner in view of Suzuki to include the option of a plurality of participating players operating a game based on a level of agreement taught by CVG so that the game machine taught by Lipps in view of Fenner in view of Suzuki can incorporate a variety of games (Lipps, 1:54-56), thereby increasing player enjoyment by adding a level of competition that a machine cannot provide.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lipps in view of Fenner as applied to claims 1-2, 6-8, 10, 12, 14, 16, 20, 22-23, 27-29, 33, 40, and 51 above, and further in view of Allard et al.' 193 (Hereafter, Allard). Lipps in view of Fenner teaches the claimed limitations as discussed above in addition to sensing a player's height (1:46), but does not teach game adjustment based on a player's height. Allard teaches that a player can have the game machine indicative position adjusted (Claim 40 and 7:57-65). One would be motivated to modify Lipps in view of Fenner as adjusting for a player's height is considered an ergonomic design choice. Well known in the art, dealing with human interactions, is adjustment to an individual's physical attributes is necessary to accommodate a system directed at a general population. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lipps in view of Fenner to adjust indicative positions for player height to insure that a range of player's can have equal advantage, thus increasing amount

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of available players.

Response to Arguments

Applicant's arguments have been fully considered and were persuasive. Applicant's amendment requiring multiple successive spatial positions to determine game player position distinguished over prior art. Examiner has provided a response regarding a new rejection that is detailed above.

Citation of Pertinent Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 6,184,863 to Sibert et al. teaches a light emitter and detector system for use as a replacement for standard computer user input.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron L Enatsky whose telephone number is 703-305-3525. The examiner can normally be reached on 8-6 M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa Walberg can be reached on 703-308-1327. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

ALE 


Teresa Walberg
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